

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

GENERAL COUNSEL
OF COPYRIGHT

NOV 10 1997

RECEIVED

In the Matter Of

ADJUSTMENT OF THE RATES FOR
NONCOMMERCIAL EDUCATIONAL
BROADCASTING COMPULSORY LICENSE

)
) Docket No. 96-6
) CARP NBRA
)
)
)

ASCAP'S MOTION TO COMPEL PRODUCTION FROM BMI

Philip H. Schaeffer, Esq.
Joan M. McGivern, Esq.
J. Christopher Shore, Esq.
Sam Mosenkis, Esq.
WHITE & CASE
1155 Avenue of the Americas
New York, New York 10036-2787
212-819-8200

Beverly A. Willett, Esq.
ASCAP Building
One Lincoln Plaza, Sixth Floor
New York, New York 10023
(212) 621-6289

Attorneys for ASCAP

Dated: November 7, 1997

In the Matter Of

Docket No. 96-6
CARP NBRA

The initial request by ASCAP refers to materials which have been designated by BMI as "attorneys' eyes only" and are regarded as being of the highest degree of confidentiality and subject to the protective order entered in this proceeding. Submitted separately with this motion in a sealed envelope is a copy of ASCAP's requests to BMI, containing references to BMI's highly confidential testimony. This sealed exhibit is being filed with the Copyright Office only as BMI already has a copy, and no other party requires a copy.

Responses between ASCAP and BMI were scheduled to be exchanged on November 7, 1997. ASCAP anticipated and understood that mutual production of documents would take place on the same date or shortly thereafter. Counsel for ASCAP is and has informed counsel for BMI that ASCAP is ready, willing and able to exchange documents on that date.

On November 5, 1997, counsel for ASCAP was informed by BMI's counsel that BMI would not be able to respond until November 11, 1997, and would not produce documents until November 14, 1997. Counsel for BMI further requested that ASCAP consent to an extension of the deadlines previously set by the Copyright Office into December 1997. It was and remains ASCAP's understanding that the deadlines set by this Office's Scheduling Order were to be "final." The date for this proceeding has already been delayed and ASCAP believes that it is in the best interests of its membership and all parties to this proceeding not to delay the proceeding further. Accordingly, ASCAP will not seek or consent to any such extension. It would be unfair and highly prejudicial for ASCAP to be required to procure highly confidential and sensitive documents before BMI is required to do the same. Nevertheless, ASCAP is prepared to exchange documents simultaneously with BMI's production to ASCAP.

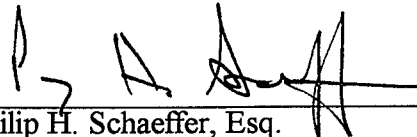
Simultaneously with this motion, ASCAP is serving its responses to BMI's requests, but will not be producing documents. BMI should be directed to respond and produce the documents requested by ASCAP as soon as possible and in no event should ASCAP be required to produce documents prior to the time that BMI does.

CONCLUSION

Wherefore, for the reasons stated above, the Copyright Office should grant ASCAP's Motion to Compel Production from BMI or such other relief as the Office deems appropriate.

Dated: November 7, 1997

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. H. Schaeffer', written over a horizontal line.

Philip H. Schaeffer, Esq.
Joan M. McGivern, Esq.
J. Christopher Shore, Esq.
Sam Mosenkis, Esq.
White & Case
1155 Avenue of the Americas
New York, New York 10036-2787
(212) 819-8200

Beverly A. Willett, Esq.
ASCAP Building
One Lincoln Plaza, Sixth Floor
New York, New York 10023
(212) 621-6289

Attorneys for ASCAP

Before The
LIBRARY OF CONGRESS
United States Copyright Office
Copyright Arbitration Royalty Panel
Washington, D.C. 20024

In the Matter Of

ADJUSTMENT OF THE RATES FOR
NONCOMMERCIAL EDUCATIONAL
BROADCASTING COMPULSORY LICENSE

)
) Docket No. 96-6
) CARP NCBRA
)
)

CERTIFICATE OF SERVICE

I am an associate at White & Case. On November 7, 1997, I cause to be served by hand same day delivery true copies of ASCAP's Motion to Compel Production from BMI; only the Copyright Office is receiving a copy of the confidential exhibit to the motion in a sealed envelope:

NPR -

Neal A. Jackson, Esq.
Denise Leary, Esq.
Gregory A. Lewis, Esq.
National Public Radio
635 Massachusetts Avenue, N.W.
Washington, D.C. 20001
PH: 202-414-2000
FAX: 202-414-3329

PBS -

Paula A. Jameson, Esq.
Ann W. Zedd, Esq.
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314-1698
PH: 703-739-5000
FAX: 703-739-5358

**COUNSEL for NPR
& PBS -**

R. Bruce Rich, Esq.
Mark J. Stein, Esq.
Tracey I. Blatt, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
PH: 212-310-8000
FAX: 212-310-8007

BMI -

Counsel for PBS and NPR

Marvin L. Berenson, Esq.
Joseph J. DiMona, Esq.
Broadcast Music, Inc.
320 East 57th Street
New York, New York 10019
PH: 212-830-2533
FAX: 212-397-0789

**Counsel for
BMI -**

Norman C. Kleinberg, Esq.
Michael E. Salzman, Esq.
Hughes Hubbard & Reed, LLP
One Battery Plaza
New York, New York 10004
PH: 212-837-6000
FAX: 212-422-4726

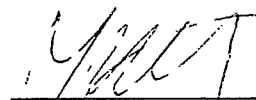
**Counsel for NMPA and
Harry Fox Agency**

Carey R. Ramos, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019-6064
PH: 212-373-3000
FAX: 212-953-2384

U.S. Copyright Office -

Tanya M. Sandros, Esq.
Office of the Copyright General Counsel
Room 403
James Madison Building
Washington, DC 20540
PH: 202-707-8380
FAX: 202-707-8366

Dated: New York, New York
November 7, 1997



Joan M. McGivern

WHITE & CASE

UNITED STATES
LOS ANGELES
MIAMI
NEW YORK
WASHINGTON, D.C.

EUROPE
BRUSSELS
BUDAPEST
HELSINKI
ISTANBUL
LONDON
MOSCOW
PARIS
PRAGUE
STOCKHOLM
WARSAW

AFRICA
JOHANNESBURG

1155 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036-2787

TELEPHONE: (1-212) 819-8200
FACSIMILE: (1-212) 354-8113

DIRECT DIAL: (212) 819-8740

ASIA
ALMATY
ANKARA
BANGKOK
BOMBAY
HANOI
HONG KONG
JAKARTA
SINGAPORE
TASHKENT
TOKYO

MIDDLE EAST
JEDDAH
RIYADH

LATIN AMERICA
MEXICO CITY

September 30, 1997

VIA TELECOPIER AND BY HAND

Nanette Petruzzulli, Esq.
Acting General Counsel
Office of the Copyright General Counsel
Room 403
James Madison Building
101 Independence Avenue, S.E.
Washington, DC 20540

Re: Noncommercial Educational Broadcasting Compulsory License
Docket No. 96-6 CARP NCBRA

Dear Ms. Petruzzulli:

On September 26, 1997, the parties to this proceeding filed a Motion for Entry of Protective Order with the Copyright Office (the "Office"). The parties have assumed that the Office will rule favorably on the Protective Order in the near future.

Since the filing of the Motion, a disagreement has arisen between ASCAP and at least one other party to this proceeding concerning certain highly sensitive and confidential information regarding the rates and terms for a compulsory license between ASCAP, Public Broadcasting Service ("PBS") and National Public Radio ("NPR"). That information is contained in ASCAP's written direct case. ASCAP believes this confidential material is irrelevant to the concerns of any party other than PBS or NPR.

It is unlikely that this dispute will be resolved before tomorrow when ASCAP must file and serve its written direct case in this proceeding on all parties. In the interim, and while we continue our discussions to resolve this issue, ASCAP will nevertheless comply with its obligations to file its direct case on October 1, 1997. ASCAP will serve a complete

WHITE & CASE

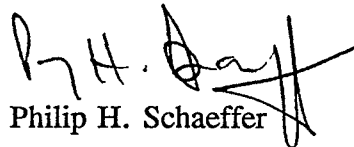
Nanette Petruzzulli, Esq.

Page 2

copy of its written direct case on PBS, NPR and their counsel, on the understanding that they will adhere to the provisions of the submitted Protective Order. ASCAP will serve a redacted version on the other parties to this proceeding. .

If ASCAP is unable to reach agreement regarding the handling of this highly sensitive and confidential information, ASCAP reserves its rights under paragraphs 11 and 3(b) of the Protective Order, if it is entered, to request the Office, the Library of Congress and/or the CARP, as appropriate, for clarification of and appropriate relief under that Protective Order.

Sincerely,

A handwritten signature in dark ink, appearing to read "P. H. Schaeffer", with a stylized flourish extending from the end.

Philip H. Schaeffer

cc: Service List

SERVICE LIST
DOCKET No. 96-6 CARP NCBRA

NPR -

Neal A. Jackson, Esq.
Denise Leary, Esq.
Gregory A. Lewis, Esq.
National Public Radio
635 Massachusetts Avenue, N.W.
Washington, DC 20001
PH: 202-414-2000
FAX: 202-414-3329

PBS -

Paula A. Jameson, Esq.
Ann W. Zedd, Esq.
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314-1698
PH: 703-739-5000
FAX: 703-739-5358

**Counsel for NPR
& PBS -**

R. Bruce Rich, Esq.
Mark J. Stein, Esq.
Tracey I. Batt, Esq.
Weil, Gotschal & Manges LLP
767 Fifth Avenue
New York, New York 10153-0119
PH: 212-310-8000
FAX: 212-310-8007
Counsel for PBS and NPR

BMI -

Marvin L. Berenson, Esq.
Joseph J. DiMona, Esq.
Broadcast Music, Inc.
320 West 57th Street
New York, New York 10019
PH: 212-830-2533
FAX: 212-397-0789

**Counsel for
BMI -**

Norman C. Kleinberg, Esq.
Michael E. Salzman, Esq.
Hughes Hubbard & Reed, LLP
One Battery Plaza
New York, New York 10004
PH: 212-837-6000
FAX: 212-422-4726
Counsel for BMI

**NMPA/
Harry Fox -**

Mr. Edward P. Murphy
President and CEO
**National Music Publishers' Association
and The Harry Fox Agency, Inc.**
711 Third Avenue
New York, New York 10017
PH: 212-370-5330
FAX: 212-953-2384

**Counsel
for NMPA and Harry
Fox Agency -**

Carey R. Ramos, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019-6064
PH: 212-373-3000
FAX: 212-373-2773
Counsel for NMPA/Harry Fox

**Counsel for
NRBMLC -**

Bruce G. Joseph, Esq.
Karyn K. Ablin, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006
PH: 202-429-7000
FAX: 202-429-7049
**Counsel for National Religious Broadcasters
Music License Committee**

SESAC -

Henry R. Kaufman, Esq.
SESAC, Inc.
421 West 54th Street
New York, NY 10019
PH: 212-586-3450
FAX: 212-489-5699

Counsel for SESAC -

Kenneth M. Kaufman, Esq.
Roberts & Eckard, P.C.
Suite 1100
1150 Connecticut Avenue, N.W.
Washington, DC 20036
PH: 202-296-0533
FAX: 202-296-0464
Counsel for SESAC

U.S. Copyright Office -

Tanya M. Sandros, Esq.
Office of the Copyright General Counsel
Room 403
James Madison Building
101 Independence Avenue, S.E.
Washington, DC 20540
PH: 202-707-8380
FAX: 202-707-8366

Hughes Hubbard & Reed LLP

One Battery Park Plaza
New York, New York 10004-1482
Telephone: 212-837-6000
Facsimile: 212-422-4726

October 22, 1997

VIA TELECOPY

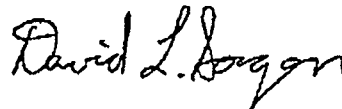
Joan M. McGivern, Esq.
White & Case
1155 Avenue of the Americas
New York, New York 10036

Re: Noncommercial Educational Broadcasting
Compulsory License, Docket No. 96-6
CARP NCBRA, U.S. Copyright Office,
Library of Congress

Dear Joan:

I am attaching an executed copy of the letter agreement between BMI and ASCAP. As we discussed, today we intend to exchange the information that was previously redacted or withheld.

Sincerely,



David L. Sorgen

W6-NY972950.130

WHITE & CASE

UNITED STATES
LOS ANGELES
MIAMI
NEW YORK
WASHINGTON, D.C.

EUROPE

BRUSSELS
BUDAPEST
MELBURN
ISTANBUL
LONDON
MOSCOW
PARIS
PRAGUE
STOCKHOLM
WARSAW

AFRICA

JOHANNESBURG

1155 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036-2787

TELEPHONE: (1-212) 819-8200

FACSIMILE: (1-212) 354-8113

DIRECT DIAL: (212) 819-8856

ASIA

ALMATY
ANKARA
BANGKOK
BOMBAY
HANOI
HONG KONG
JAKARTA
SINGAPORE
TASHKENT
TOKYO

MIDDLE EAST

JEDDAH
RIYADH

LATIN AMERICA

MEXICO CITY

October 21, 1997

By Hand

Michael Salzman, Esq.
Hughes, Hubbard & Reed, LLP
One Battery Park Plaza
New York, New York 10004-1482

re Noncommercial Educational Broadcasting Compulsory License, Docket No. 96-6
CARP NCBRA, U.S. Copyright Office, Library of Congress

Dear Michael:

This letter is to confirm the agreement that we have reached between us as counsel for Broadcast Music Inc., ("BMI") and counsel for the American Society of Composers, Authors and Publishers ("ASCAP"), respectively, concerning the exchange and handling of certain confidential documents and information in the above proceeding. The purpose of this agreement is to add an additional layer of confidential treatment for certain documents and information, including testimony, beyond the provisions found in the Protective Order, entered in the present case. Such documents requiring an additional layer of confidential treatment will be clearly labeled "attorneys' eyes only" as well as bearing the confidential language found in the Protective Order, being "Confidential Protected Materials Subject to the Protective Order in Docket No. 96-6 CARP NCBRA." Testimony, oral or written, submitted, elicited or containing information requiring this higher level of confidential treatment will be clearly labeled, or requested to be labeled, "attorneys' eyes only," and separately submitted or otherwise kept separate from the public record and from the persons to be excluded as set forth below.

Information to be Covered & Persons Excluded

In particular, this agreement is intended to cover the documents and information which BMI redacted from the copy of its Direct Case served on ASCAP ~~last~~ Wednesday,

MES

WHITE & CASE

Michael Salzman, Esq.

Page 2

October 1, 1997, and the confidential appendix to Dr. Peter Boyle's testimony which is part of ASCAP's Direct Case, but was withheld from service on BMI, and the underlying documents thereto.

There is a dispute between BMI and ASCAP as to whether the information contained in these redacted and withheld documents should be shown to employees, officers, directors or consultants of BMI or ASCAP. However, both our clients and we both as counsel to our clients, believe that it is in the best interests of our clients and that it will permit us to best represent their interests in the above proceeding, if we as outside counsel and their consultants are permitted to exchange and review the documents and information that was mutually redacted and withheld from service on each other and our clients.

On ASCAP's part, and at BMI's request, the persons to be excluded from all contact with or review of such redacted information of BMI's include not only employees, officers, directors and consultants, but also to be excluded are: I. Fred Koenigsberg, Esq., a partner of White & Case, who serves as ASCAP's general counsel, and Beverly A. Willett, Esq., who works under an independent contract with ASCAP on ASCAP's premises or other attorneys under contract with ASCAP. On BMI's part, and at ASCAP's request, the persons to be excluded from all contact with or review of redacted information of ASCAP's will include BMI employees, officers, directors and consultants (including Richard Link), and in particular, but not limited to, Marvin Berenson, Esq. and Joseph DiMona, Esq., who have appeared as counsel for BMI in the present proceeding.

This agreement is intended to cover any and all additional information exchanged or elicited that either of our clients, or we on their behalf, may designate or request be designated as "attorneys' eyes only," be it information contained in documents or testimony.

Persons to be Included

The persons to be permitted to have contact with or review the information referenced above, designated as "attorneys' eyes only" information, whether contained in documents or testimony, will include attorneys at Hughes, Hubbard & Reed, LLP, who are working on this matter, attorneys at White & Case, who are working on this matter, except for Mr. Koenigsberg as noted above, as well as legal assistants and outside experts or consultants who are working directly with the foregoing attorneys, provided however, that all such persons will have signed a copy of Appendix B of the Protective Order as well as a copy of Exhibit A to this letter.

Destruction or Return of Documents

WHITE & CASE

Michael Salzman, Esq.


Page 3

We each agree that within thirty days of the above proceeding having concluded in a settlement for our client or a final, non-appealable decision, that counsel for the party as to whom the proceeding is concluded will destroy or return all copies of documents which were designated "attorneys' eyes only," and all copies of transcripts and written testimony given or elicited with the understanding or request that it be treated as "attorneys' eyes only" testimony. If counsel for such a party chooses to destroy such documents or testimony, that counsel will so certify in a written letter to the other party's counsel.

Without Prejudice

Finally, we both agree that this agreement is without prejudice to either of us subsequently determining that we want to give access to the documents designated as "attorney's eyes only" to inside counsel of record (that is Mr. Koenigsberg and Ms. Willett or Mr. Berenson and Mr. Dimona, as the case may be). Thus, if either party wants to disclose the "attorneys' eyes only" material to inside counsel of record, the disclosing party shall give the other party fourteen days' advance written notice of such intention to disclose. If, within the fourteen days following such notice the other party asks the Copyright Office (or the Copyright Arbitration Royalty Panel ("CARP") appointed in this matter, as the case may be) to enforce the "attorneys' eyes only" restriction, the disclosing party shall continue to observe the restriction to outside counsel and consultants only until such time as the Copyright Office or the CARP shall rule on the other party's application to enforce the restriction. The Copyright Office (or the CARP) shall determine who has the burden of persuasion over such application to enforce the restriction. Should the Copyright Office or the CARP grant the other party's application to enforce the order, the party seeking disclosure will abide by the order and continue to observe the restriction discussed above.

Very truly yours,



Philip H. Schaeffer

Agreed to:


Michael E. Salzman 10/22/97

cc: I. Fred Koenigsberg, Esq.
Beverly Willett, Esq.
Joan M. McGivern, Esq.
J. Christopher Shore, Esq.